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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA, Respondent, v. D RYAN JONES, Petitioner.	2 CA-CR 2012-0192-PR DEPARTMENT A MEMORANDUM DECISION Not for Publication Rule 111, Rules of the Supreme Court

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF MARICOPA COUNTY

Cause No. CR2008166193001DT

Honorable Emmet J. Ronan, Judge

REVIEW GRANTED; RELIEF DENIED

D Ryan Jones — Florence
In Propria Persona

E C K E R S T R O M, Presiding Judge.

¶1 Pursuant to a plea agreement in August 2009, petitioner D Ryan Jones was convicted of molestation of a child, attempted molestation of a child, and sexual abuse, all dangerous crimes against children. Pursuant to the stipulated sentence in the plea agreement, the trial court sentenced Jones in October 2009 to a slightly mitigated sixteen-year prison term on the first count, followed by lifetime probation on the other counts.

¶2 In November 2009, Jones filed a pro se notice of post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P., and an attorney was appointed to represent him. Unable to find any post-conviction claims to raise, counsel filed a notice of review pursuant to Rule 32.4(c)(2). The trial court allowed Jones to file a pro se petition, which it dismissed without conducting an evidentiary hearing. Jones filed a motion for rehearing, which the court also summarily dismissed. This petition for review followed. "We will not disturb a trial court's ruling on a petition for post-conviction relief absent a clear abuse of discretion." *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). We find no such abuse here.

¶3 On review, Jones asks that we "[o]rder further briefing"[1] and remand for an evidentiary hearing on a variety of claims, including challenges to his sentence and the imposition of lifetime probation, the constitutionality of the sentencing statutes, and his assertion that his attorneys were ineffective.[2] In summary, in his first seven arguments, Jones asserts A.R.S. § 13-705[3] is unconstitutional as applied, rendering his sentence illegal; his sentence violates double jeopardy; and, the application of lifetime probation with the sex offender registration requirement is unconstitutional. The court correctly found that, by pleading guilty, Jones had waived the right to raise these claims. As such,

[1]We remind Jones that, because Rule 32.9(c) limits our review to "the actions of the trial court," further briefing is not appropriate.

[2]Jones's mother retained an attorney to work with appointed counsel. *See Knapp v. Hardy*, 111 Ariz. 107, 110-11, 523 P.2d 1308, 1311-12 (1974).

[3]The relevant statute in effect at the time Jones committed the offenses was former A.R.S. § 13-604.01. It since has been amended and renumbered as A.R.S. § 13-705. *See* 2008 Ariz. Sess. Laws, ch. 301, §§ 17, 29.

he has waived the opportunity to challenge not only his sentence but any statute upon which his sentence was based. *See State v. Crocker*, 163 Ariz. 516, 517, 789 P.2d 186, 187 (App. 1990) (entry of guilty plea waives all nonjurisdictional defenses, including challenge to constitutionality of statute).

¶4 The record is clear that Jones understood he would be sentenced pursuant to § 13-705. In both the plea agreement and at the change-of-plea hearing, Jones indicated he understood he was pleading guilty to offenses that are dangerous crimes against children, and that he would be sentenced to a maximum presumptive term of seventeen years on the child molestation count, to be followed by lifetime probation on the other counts, including registration as a sex offender. In fact, at the change-of-plea hearing, Jones's attorney questioned the legality of imposing a lifetime sex offender registration requirement. However, Jones responded affirmatively when the trial court explained, "[F]or purposes of your understanding of what the potential consequences are of entering the plea, you understand that . . . you likely will be required to register as a sex offender for the rest of your life. Do you understand that?" At sentencing, Jones's attorney again acknowledged his agreement with the sentencing terms set forth in the plea agreement.

¶5 Moreover, as part of his plea agreement, Jones waived "and g[ave] up any and all motions, defenses, objections, or requests which he . . . ha[d] made or raised, or could assert [t]hereafter, to the Court's entry of judgment against him . . . and imposition of a sentence upon him . . . consistent with this agreement." Thus, because Jones pled guilty, the trial court properly found he had waived all nonjurisdictional claims, including the first seven claims before us on review.

¶6 Next, we address Jones's claims of ineffective assistance of counsel. He contends his attorneys were ineffective in failing to: investigate and present at sentencing "evidence of Asperger's Disorder" and his difficult childhood, asserting the trial court would have imposed a shorter sentence within the sentencing range if counsel had raised these issues; and, "raise objections to constitutional infirmities in his sentence," essentially arguing that unless the court addressed each of his first seven claims on the merits, which we have noted Jones waived by pleading guilty, it could not have determined whether his attorneys were ineffective for having failed to raise those claims in the first place.

¶7 The trial court concluded Jones failed to present any colorable claims of ineffective assistance of counsel. Generally, "[t]o state a colorable claim of ineffective assistance of counsel, a defendant must show both that counsel's performance fell below objectively reasonable standards and that this deficiency prejudiced the defendant." *State v. Bennett*, 213 Ariz. 562, ¶ 21, 146 P.3d 63, 68 (2006).

¶8 However, as the trial court correctly noted in its order dismissing the petition below, Jones provided nothing more than "speculation" that he suffered from mental illness. Aside from a letter from Jones's mother stating she had notified counsel that Jones "exhibits several of the characteristics commonly associated with [Asperger's Syndrome]," Jones did not provide evidence that he suffered from Asperger's Syndrome, or any other mental illness, for that matter. Based on the record, therefore, Jones did not present a colorable claim because he did not demonstrate actual mental illness or that counsel's failure to raise his background as a mitigating circumstance fell below

prevailing professional norms. A Rule 32 petitioner "is entitled to an evidentiary hearing only when he presents a colorable claim—one that, if the allegations are true, might have changed the outcome." *State v. Runningeagle*, 176 Ariz. 59, 63, 859 P.2d 169, 173 (1993); *see also* Ariz. R. Crim. P. 32.6(c) (court shall dismiss petition upon determination "no [non-precluded] claim presents a material issue of fact or law which would entitle the defendant to relief . . . and that no purpose would be served by any further proceedings"). In addition, to the extent Jones argues counsel should have challenged the constitutional validity of sentencing him to a dangerous crime against children to be followed by lifetime probation, including registration as a sex offender, because Jones understood and agreed to these conditions under the terms of his guilty plea, he has not only waived any claims related thereto, but he also has waived any related claims of ineffective assistance.

¶9 Accordingly, we find the trial court did not abuse its discretion by denying post-conviction relief. We grant the petition for review but deny relief.

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Presiding Judge

CONCURRING:

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

/s/ J. William Brammer, Jr.
J. WILLIAM BRAMMER, JR., Judge